

ORIGINAL

FCC MAIL SECTION

Jul 28 2 23 PM '92
 Before the
 Federal Communications Commission
 Washington, D.C. 20554

MM Docket No. 92-157

In the Matter of

Amendment of Section 73.202(b), RM-7462
 Table of Allotments,
 FM Broadcast Stations.
 (Cleveland and Belzoni,
 Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 13, 1992;

Released: July 28, 1992

Comment Date: September 18, 1992

Reply Comment Date: October 5, 1992

By the Chief, Allocations Branch:

1. The Commission has before it for consideration a petition for rule making filed by Larry G. Fuss, d/b/a Contemporary Communications ("petitioner"), former licensee of WQAZ(FM) (now WDTL-FM), Cleveland, Mississippi, and successor in interest to Robert G. Johnston, Trustee, requesting the substitution of FM Channel 225C2 for Channel 224A at Cleveland and the modification of the license of Station WQAZ(FM) to specify operation on the higher class channel.¹ To accommodate the Cleveland channel substitution, petitioner proposes the substitution of Channel 292A for Channel 225A at Belzoni, Mississippi, and the modification of the construction permit of Larry R. Scott ("Scott"), permittee for WJSJ(FM), Channel 225A, Belzoni, accordingly. Petitioner states his intention to apply for the channel, if allotted.²

2. In recognition of the Commission's policy concerning the involuntary relocation of an authorized transmitter, petitioner provided a copy of an agreement with Scott consenting to a change in its authorized transmitter site, as well as its proposed channel of operation, to accommodate the modification for Station WQAZ(FM).

3. We believe the public would be served by proposing the substitution of Channel 225C2 for Channel 224A at Cleveland, Mississippi since it would provide the community with a wide coverage area FM service. Channel 225C2 can be allotted to Cleveland in compliance with the Commission's minimum distance separation requirements at

the petitioner's current site.³ Channel 292A can be substituted for Channel 225A at Belzoni, Mississippi in compliance with the minimum distance separation requirements with a site restriction 8.4 kilometers (5.2 miles) southeast.⁴ As requested, we also propose to modify petitioner's license for Station WDTL-FM to specify operation on Channel 225C2 at Cleveland. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 225C2 at Cleveland or require petitioner to demonstrate the availability of an additional equivalent class channel. In addition, we shall propose to modify the construction permit for Channel 225A, Belzoni, Mississippi (FCC File No. BPH-870327KD) issued to Larry R. Scott to accommodate the Cleveland, Mississippi proposal.

4. Whenever an existing licensee or permittee is ordered to change frequencies in order to accommodate a new channel allotment, Commission policy requires the benefiting party to reimburse the affected station for costs incurred therewith. In this instance, petitioner stated its willingness to prepare the engineering exhibit for the minor change application made necessary by the channel modification to specify the new site at no charge to Scott.

5. Although an *Order to Show Cause* to Scott for the proposed station on Channel 225A, Belzoni, Mississippi, is not required in view of its consent to Scott's modification request, we will serve Scott with a copy of this *Notice*.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Cleveland, Mississippi	224A, 280A, 295A	225C2, 280A, 295A
Belzoni, Mississippi	225A, 296A	292A, 296A

7. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND a copy of this *Order* by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the following: Larry R. Scott, 1605 Carlisle Drive, E., Mobile, AL 36618, and Delta Radio, Inc. P.O. Box 159, Fayetteville, GA 30214.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **September 18, 1992** and reply comments on or before **October 5, 1992** and are advised to read the Appendix for

¹ An assignment of license for Station WQAZ(FM) to Delta Radio, Inc. was consummated on March 18, 1992 (BALH-9020212HC). We will serve Delta Radio with a copy of this *Notice*.

² The instant petition was initially rejected as defective based upon a grant of Scott's application for construction permit on Channel 225A at Belzoni, Mississippi. See *Letter* to Larry G. Fuss from Assistant Chief, Policy and Rules Division, October

18, 1990. Petitioner filed a petition for reconsideration of that action. We will treat petitioner's petition for reconsideration as a petition for rule making.

³ The coordinates for Channel 225C2 at Cleveland are North Latitude 33-45-12 and West Longitude 90-42-45.

⁴ The coordinates for 292A at Belzoni are North Latitude 33-08-06 and West Longitude 90-24-58.

the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner and its counsel as follows:

Barbara L. Waite, Esq.
Venable, Baetjer, Howard & Civiletti
1201 New York Ave., N.W., Suite 1000
Washington, D.C. 20005

Delta Radio, Inc.
P.O. Box 159
Fayetteville, GA 30214.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.